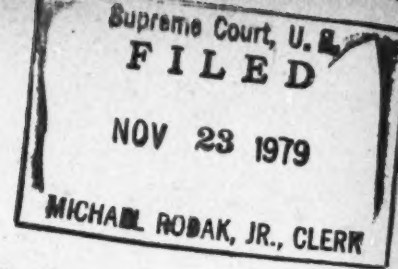


79-807

No. \_\_\_\_\_



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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

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ROBERT PEER, Director of the Department of Public Welfare of  
the County of San Diego; and TOM HAMILTON, LUCILLE MOORE,  
ROGER HEDGECOCK, JIM BATES, and PAUL ECKERT, as individual  
members of the San Diego County Board of Supervisors,  
*Petitioners,*

v.

NANETTE GRIFFETH, JOHN TEBO, and MILDRED TEBO, AND ALL  
OTHERS SIMILARLY SITUATED,

*Respondents.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

ROBERT PEER, Director of the Department of Public Welfare of the County of San Diego; and TOM HAMILTON, LUCILLE MOORE, ROGER HEDGECK, JIM BATES, and PAUL ECKERT, as individual members of the San Diego County Board of Supervisors,  
*Petitioners,*

v.

NANETTE GRIFFETH, JOHN TEBO, and MILDRED TEBO, AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitioners are Robert Peer, Director of the Department of Public Welfare of the County of San Diego; and Tom Hamilton, Lucille Moore, Roger Hedgecock, Jim Bates and Paul Eckert, as individual members of the San Diego County Board of Supervisors. Pursuant to Federal Rule of Civil Procedure 25(d)(1), Robert Peer, Tom Hamilton, Lucille Moore, Roger Hedgecock



and Paul Eckert were substituted as the successors in office to Homer Detrich, Jack Walsh, Dick Brown, Lou Conde, and Lee R. Taylor, respectively. The petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on August 29, 1979.

### OPINION BELOW

The Opinion of the District Court (App. A of this Petition) is reported at 448 F.Supp. 1137 (S.D.Cal. 1978). The Opinion of the Court of Appeals and the concurring Opinion (App. B of this Petition) are reported at 603 F.2d 118 (9th Cir. 1979).

### JURISDICTION

The Judgment of the Court of Appeals was entered on August 29, 1979, and this petition for certiorari is filed within 90 days of that date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1) [28 U.S.C.S. § 1254(1)].

### STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent provisions involved are the Fourteenth Amendment to the United States Constitution; the Federal Declaratory Judgment Act, codified as 28 U.S.C. § 2201 (28 U.S.C.S. § 2201); 42 U.S.C. 1983 (42 U.S.C.S. 1983); and Sections 17000 and 17001 of the Welfare and Institutions Code of the State of California. These provisions are set out in Appendix C to this Petition.

### QUESTION PRESENTED

Does the Due Process Clause of the Fourteenth Amendment apply to the granting or denial of general relief welfare benefits?

### STATEMENT OF THE CASE

The County of San Diego (County), of which petitioners are officers and employees, provides general relief welfare benefits to indigents pursuant to California Welfare and Institutions Code Section 17000. The program is financed solely from local revenues. Respondents Nanette Griffeth and John and Mildred Tebo were denied general relief benefits by the County.

The First Amended Complaint in this matter was filed by Nanette Griffeth on behalf of herself and all others similarly situated on September 21, 1976. Federal jurisdiction was invoked under 28 U.S.C. § 1343(3) and plaintiffs alleged a cause of action under 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. 1983. They claimed that the Due Process Clause of the Fourteenth Amendment required that they be afforded an evidentiary hearing by the County and sought declaratory and injunctive relief.

On January 7, 1977, the District Court denied the petitioners' motion to dismiss for failure to state a claim, granted Mildred and John Tebo the right to intervene, and issued a preliminary injunction ordering the petitioners to grant the Tebos an evidentiary hearing. The Court also certified the matter as a class action.

On March 29, 1978, however, ruling upon cross motions for summary judgment, the District Court held that applicants for welfare benefits under California's general relief program do not have a property interest in obtaining such relief that is protected by the Due Process Clause of the Fourteenth Amendment (*Nanette Griffeth v. Homer Detrich*, [S.D. Cal. 1978] 448 F. Supp. 1137).

On August 29, 1979, the Court of Appeals for the Ninth Circuit reversed the District Court's judgment and ordered the mat-



ter remanded to the District Court for a determination of what procedures were required by the Due Process Clause (*Nanette Griffeth v. Homer Detrich*, [9th Cir. 1979] 603 F.2d 118).

### REASONS FOR GRANTING THE WRIT

In *Goldberg v. Kelly* (1970) 397 U.S. 254 and its companion case of *Wheeler v. Montgomery* (1970) 397 U.S. 280, this Court held that prior to terminating welfare benefits, the recipient must be afforded the opportunity for an evidentiary hearing including the opportunity to confront and cross-examine witnesses relied on by the welfare department, to retain an attorney, to present oral evidence, and to receive a written decision based solely on the legal rules and evidence adduced at the hearing (*Goldberg v. Kelly*, [1970] 397 U.S. 254, 270-271). The Court did not consider whether considerations of procedural due process apply when initial applications for benefits are denied (*Wheeler v. Montgomery*, [1970] 397 U.S. 280, 284-285 [Burger, C.J., dissenting]). That issue has never been decided by this Court.

This Petition squarely raises the question of whether an applicant for general relief welfare benefits in California has a property interest in such benefits within the meaning of the Due Process Clause of the Fourteenth Amendment. The District Court held that no such property interest existed, but the Court of Appeals disagreed. The only California decision on the subject found no property interest to exist (*Zobriscky v. Los Angeles County* [1972] 28 Cal.App.3d 930). Thus, there is a conflict between the highest state court in California to consider the issue and the Court of Appeals for the Ninth Circuit. (See also *Cervoni v. Secretary of Health, Education and Welfare*, [1st Cir. 1979] 581 F.2d 1010, 1018-1019.) The determination of the issue is a matter which will have a broad impact on locally

funded welfare programs throughout the nation and should be considered by this Court.

The decision of the Court of Appeals misconstrues California law and the previous decisions of this Court. This Court has repeatedly emphasized that the existence of a property interest or claim of entitlement must be decided by reference to state law (*Board of Regents v. Roth* [1972] 408 U.S. 546, 578; *Bishop v. Wood* [1976] 426 U.S. 341, 344). This principle was correctly applied by the District Court in determining that denial of general relief benefits did not raise due process considerations. The Court of Appeals for the Ninth Circuit, however, ignored the "authoritative interpretation" of the relevant state statutes by the highest appellate court in California to consider the issue (*Bishop v. Wood*, *supra*, 426 U.S. at 345). Contrary to the statements of the Court of Appeals, the California Court of Appeal in *Zobriscky v. County of Los Angeles* (1972) 28 Cal.App.3d 930 specifically concluded that an applicant for general relief was not entitled as a matter of due process of law to an evidentiary hearing on his application for such relief. The District Court properly concluded that the *Zobriscky* decision was instructive "of the state court's view that General Relief is a public benefit similar to other benefits which are not deserving of an evidentiary hearing prior to their denial." (*Nanette Griffeth v. Homer Detrich*, *supra*, 448 F.Supp. at 1141.)

The Court of Appeals for the Ninth Circuit placed heavy emphasis on the recent decision of this Court in *Greenholtz v. Nebraska Penal Inmates* (1979) \_\_\_\_\_, U.S. \_\_\_\_\_, 60 L.Ed.2d 668, in which this Court appeared to hold that the expectancy of release provided by a Nebraska parole statute was entitled to some measure of constitutional protection (*Greenholtz v. Nebraska*



*Penal Inmates* [1979] \_\_\_\_\_ U.S. \_\_\_\_\_, 60 L.Ed.2d 668, 678). In the *Greenholtz* case, however, this Court and the lower federal courts did not have the benefit of an authoritative state court decision construing the statute in question. Therefore, the Court of Appeals' reliance on the *Greenholtz* decision was misplaced.\*

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\*Even if it should be concluded that the Due Process Clause is applicable, the right to seek a writ of mandamus from a state court to review the decision to deny benefits provides all the procedural due process which is necessary (Calif. Code of Civil Procedure § 1085; *Nanette Griffeth v. Homer Detrich*, *supra*, 448 F.Supp. at 1142).

### CONCLUSION

The County of San Diego, like most other public entities, issues and provides a myriad of public benefits, licenses, and permits. In almost all cases some legal standards exist which, to a greater or lesser degree, constrain the discretion of County officials in determining whether to provide the particular benefit. Under the Court of Appeals decision, the existence of such standards would automatically establish a property interest and bring into play the Due Process Clause of the Fourteenth Amendment. The Court of Appeals decision contradicts applicable state law and misconstrues the decisions of this Court. The effect of the decision will be widespread. Therefore, a writ of certiorari should issue to review the judgment of the Court of Appeals for the Ninth Circuit.

Dated: November 21, 1979

Respectfully submitted,  
DONALD L. CLARK, County Counsel  
By

JOSEPH KASE, JR., Assistant

LLOYD M. HARMON, JR., Chief Deputy

WILLIAM D. SMITH, Deputy  
*Attorneys for Petitioners*



Approved by \_\_\_\_\_

## APPENDIX A

**APPENDIX A**

**Nanette GRIFFETH, Individually, and on behalf of all others similarly situated, Plaintiffs,**

**v.**

**Homer DETRICH, Director of the Department of Public Welfare of San Diego County, Ruben E. Dominguez, Administrator of the Human Resources Agency of San Diego County, the Board of Supervisors of San Diego County, Jack Walsh, Supervisor, Dick Brown, Supervisor, Lou Conde, Supervisor, Jim Bates, Supervisor, and Lee R. Taylor, Supervisor, Defendants.**

**Civ. No. 76-0850-S.**

United States District Court,

S. D. California.

March 29, 1978.

**SUMMARY**

Class action was filed for declaratory and injunctive relief on behalf of all persons whose application for general relief in county had been denied or would be denied in the future. The District Court, Edward J. Schwartz, Chief Judge, held that applicant for general relief, the name given to state mandated but locally financed and administered system of relief for incompetent, indigent and incapacitated in California, does not possess property interest or claim of entitlement such as to give him a constitutional right to evidentiary hearing prior to denial of application for aid.

Plaintiffs' motion for summary judgment denied and defendants' motion for summary judgment granted.

**MEMORANDUM DECISION**

**EDWARD J. SCHWARTZ, Chief Judge.**

Plaintiffs have filed this class action for declaratory and injunctive relief on behalf of all persons whose applications for General



Relief in San Diego County have been denied since August 25, 1976, or will be denied in the future. The defendants are the Director of the San Diego County Department of Public Welfare, the Assistant Chief Administrative Officer of the San Diego County Human Resources Agency, and the individual members of the San Diego County Board of Supervisors. The case has been submitted to the court on cross motions for summary judgment. Plaintiffs request a declaratory judgment that defendants' current system of administrative review violates their rights to procedural due process under the Fourteenth Amendment. In this motion, they seek relief under 42 U.S.C. § 1983 and base the court's jurisdiction on 28 U.S.C. § 1343(3). Defendants argue that the existing system of review meets the minimal constitutional requirements of procedural due process. Neither side raises a genuine issue as to any material fact.

After reviewing the memoranda of points and authorities, all files, papers and records submitted in this action, the court finds that defendants are entitled to judgment as a matter of law. The interest of an applicant who is denied General Relief in San Diego County does not rise to the level of a property right or claim of entitlement deserving of an evidentiary hearing before aid can be denied. Accordingly, the court grants defendants' motion for summary judgment.

#### I. General Relief in San Diego County

General Relief is the name given to the state mandated but locally financed and administered system of relief for the incompetent, indigent and incapacitated in California. Cal.Welf. & Inst.Code § 17000. To implement General Relief, California requires each county to adopt standards of aid and care for its indigent residents. Cal.Welf. & Inst.Code. § 17001. Hence, the standards may vary from county to county. General Relief is designed to provide a local system of aid for those residents unable to rely on private means of support and unqualified for other programs of public welfare.

In San Diego County, the Board of Supervisors has the duty to provide General Relief benefits. The Board adopts basic policies for the program and delegates the daily administrative duties to the Department of Public Welfare. The basic policies and their implementing regulations are incorporated in the county's General Relief Program Guide (hereinafter cited as "PG").

The Board has determined that the standard of need for a single person living alone is \$120 per month. (PG § 90-600 *et seq.*) This amount refers to the level of support thought by the Board to constitute a minimum income for living in San Diego County. Very briefly, an individual becomes eligible for General Relief if (1) his income is less than his standard of need, (2) his assets are minimal (PG § 90-103.3); (3) he is willing to work, if able (PG § 90-800 *et seq.*); (4) he is a resident of the county (PG § 90-103.2); and (5) he is ineligible for other benefit programs (PG § 90-104.2). The county requires the applicant to supply various documents in order to validate the applicant's identification and residency and his financial and employment status. (PG § 90-103, 104) Together with the application for General Relief and an interview with an eligibility worker, the county uses these documents to screen out those individuals deemed ineligible for the program.

The dispute in this case focuses on those procedures used by the county in its handling of applicants who are denied the benefits of General Relief. Denied applicants receive printed Form 501 which contains a short space for the reasons why the applicant failed to receive aid. Form 501 informs the applicant of his right to an administrative review of the decision and warns that the review must be requested within four working days. Although such a review is not required by state law, the county provides the review procedure (§ 90-940.1) to catch mistakes made by the applicant or the eligibility worker at the time of application. The review consists of a 10-30 minute interview between the applicant and a General Relief supervisor. This informal hearing results in a re-evaluation of the application or a confirmation of denial. The supervisor is required to give the applicant a short written explanation of the result of the review. *Id.*

Does this system of administrative review meet the minimum procedural due process requirements mandated by the Fourteenth Amendment? Plaintiffs argue that the pretermination evidentiary hearing required by the Supreme Court in *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) should be applied to protect denied applicants for General Relief in San Diego County. Such an evidentiary hearing would include: (1) timely and adequate notice detailing the reasons for denial; (2) an effective opportunity to the applicant to defend by confront-



ing any adverse witnesses and by presenting his own arguments and evidence orally; (3) retained counsel, if desired; (4) an impartial decisionmaker; (5) a decision resting solely on the legal rules and evidence adduced at the hearing; and (6) a statement of reasons for the decision and the evidence relied on. *Id.* at 266-71, 90 S.Ct. 1011. *Mathews v. Eldridge*, 424 U.S. 319, 325, n. 4, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Defendants oppose an extension of *Goldberg's* protection of terminated recipients of welfare to denied applicants for General Relief. The Supreme Court has not ruled on the issue. *Wheeler v. Montgomery*, 397 U.S. 280, 284-85, 90 S.Ct. 1026, 25 L.Ed.2d 307 (1970) (Burger, C. J., dissenting).

## II. Procedural Due Process

[1] The Fourteenth Amendment prohibits any state from depriving any person of "life, liberty, or property, without due process of law." The concern in this case is whether denial of General Relief without a full evidentiary hearing deprives the applicant of "property" protected by the Fourteenth Amendment's due process requirement. A two step analysis is useful in such cases where the deprived property is a governmental benefit. *Geneva Towers Tenants Organization v. Federated Mortgage Investors*, 504 F.2d 483, 488 (9th Cir. 1974). First, the court must determine whether the interest at issue is a constitutionally protected "property" or "liberty". *Id.* Second, if it is a protected interest, the beneficiary's interest in avoiding loss must be balanced against the government's interest in summary adjudication. *Id.* See *Mathews v. Eldridge*, *supra*, 424 U.S. at 335, 96 S.Ct. 893. Plaintiffs have failed to overcome the first hurdle. An applicant's interest in General Relief does not rise to that level of "property" given full procedural protection by the Fourteenth Amendment.

### A. Protected Property Interests

Although flexible and expansive, the "range of interests protected by procedural due process is not infinite." *Board of Regents v. Roth*, 408 U.S. 564, 570, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548 (1972). There can be no doubt that General Relief provides an important, often crucial source of support for the indigent. The court is constrained, however, to measure and consider the nature rather than the "weight" of the interest at stake. *Id.* at 571, 92 S.Ct. 2701 (emphasis in original).

In this regard, the Supreme Court's language is instructive. To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a *legitimate claim of entitlement to it*. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

*Id.* at 577, 92 S.Ct. at 2709 (emphasis added). The task, then, is to determine whether the class of plaintiffs in this case have a "legitimate claim of entitlement" to General Relief.

Past due process distinctions between rights and privileges are no longer helpful. *Id.* at 571, 92 S.Ct. 2701; *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972); *Graham v. Richardson*, 403 U.S. 365, 374, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971). Similarly, rigid, mechanically drawn distinctions between the rights of an applicant and the rights of a recipient are more convenient than convincing. Cf. *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957); *Goldsmith v. Board of Tax Appeals*, 270 U.S. 117, 46 S.Ct. 215, 70 L.Ed. 494 (1926). The court must instead look clearly to the nature of the property interest at issue in each particular case.

Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to these benefits.

*Board of Regents v. Roth*, *supra*, 408 U.S. at 577, 92 S.Ct. at 2709. Because General Relief is a creature of state law which is given its form and dimension by California's counties, the court must turn to California law to analyze the "nature" of an applicant's interest in General Relief.

### B. The Claim for General Relief in California

[2] It must be said at the outset that the court is unable to



cite any ready source of California law which labels or excludes an application for General Relief as a "property interest" or "claim of entitlement" for purposes of Fourteenth Amendment protection. This absence of ready authority is not surprising given the elusiveness of an easy definition either for "property", an evolving concept, or for "claim of entitlement", a newly created constitutional term. See *Geneva Towers Tenants Organization v. Federated Mortgage Investors*, *supra*, 504 F.2d at 493-94 (Hufstedler, J., dissenting). The court must, therefore, locate and interpret the characteristics of General Relief to analyze the nature of that program of aid. These characteristics combine to suggest that an applicant for General Relief does not possess a property interest or claim of entitlement worthy of a full evidentiary hearing. An applicant's expectation of General Relief is insufficient to trigger those protective procedures mandated for the welfare recipients whose benefits were threatened in *Goldberg v. Kelly*, *supra*, 397 U.S. at 266-71, 90-S.Ct. 1011.

The first important characteristic of General Relief is its diverse and variable nature within California. As mentioned, California requires a General Relief system but leaves it to the counties to fund and administer the program. Cal.Welf. & Inst. Code §§ 17000, 17001. Each county may establish its own definition of the indigency level needed to qualify for General Relief. Cal.Welf. & Inst.Code § 17107. Nor does the state require the counties to grant any specific type of relief or to pay any specific amount of money at any prescribed time. *County of Los Angeles v. Department of Social Welfare*, 41 Cal.2d 455, 458, 260 P.2d 41 (1953); *Patten v. San Diego County*, 106 Cal. App.2d 467, 470, 235 P.2d 217 (1951). Indeed, the General Relief programs in California have been described as a "complex patchwork" of different programs with diverse goals and procedures. See Note, *The Rejected Applicant for General Relief and His Right to a Review*, 25 *Hast.L.J.* 678 (1974).

Such variety among the programs of General Relief in California tends to undermine the notion that an applicant has a "property interest" or "legitimate claim of entitlement." A poor person might expect or trust that some form of relief is available. But because the type, timing and amount of such relief is so variable, it is difficult to find that an applicant possesses a property interest in that relief. Similarly, one need not jump from the fact

that the state mandates General Relief to the conclusion that an applicant has a claim of entitlement to it. In reality, the counties define just who it is who qualifies for a "legitimate claim of entitlement" to General Relief. Until the applicant proves his eligibility under a particular county's guidelines, he has no legitimate claim.

A second element bearing on the status of an application for General Relief is the system of welfare hearings given to dissatisfied applicants and recipients of public social services in California. The state provides a general opportunity for a fair hearing if "any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his application for or receipt of aid or services." Cal. Welf. & Inst. Code § 10950. General Relief, however, is specifically exempted from this general hearing requirement. *Id.* Absence of a hearing right does not exclude *ipso facto* the possibility that an applicant may have a property interest in General Relief. But, such a specific exemption from the hearing requirement by state statute can be interpreted to diminish the stature of General Relief under California law. In terms of a hearing for denial or termination of benefits, General Relief has thus been placed below other welfare programs existing in California.

Lastly, the California courts have chosen not to extend the benefits of an evidentiary hearing to applicants denied General Relief. *Zobriscky v. Los Angeles County*, 28 Cal.App.3d 930, 105 Cal.Rptr. 121 (1972). In that case, the plaintiff filed suit against Los Angeles County to contest its refusal to grant him an evidentiary hearing after the denial of his application for General Relief. *Id.* at 932, 105 Cal.Rptr. 121. The court denied the request for hearing by arguing that such hearings would result in an overwhelming burden on government. *Id.* at 933, 105 Cal. Rptr. 121.

[3] *Zobriscky* does not bind this court on *res judicata* grounds because the specific policies of San Diego County were not challenged in that case. Neither is the state court's interpretation of the due process requirements of the Fourteenth Amendment binding on this court. Indeed, the opinion does not provide much illumination of the nature of General Relief in California. The opinion is, at a minimum, however, instructive of the state court's



view that General Relief is a public benefit similar to other benefits which are not deserving of an evidentiary hearing prior to their denial. *See, id.* at 932-33, 105 Cal.Rptr. 121. This viewpoint again places General Relief applicants in a position below welfare recipients in terms of procedural protection under California law.

Together, these characteristics of General Relief in California undercut the belief that an applicant for General Relief has a "property interest" or "legitimate claim of entitlement" to the desired aid. Without the existence of such a property interest, the plaintiffs fail to pass the threshold step of the requirements of procedural due process under the Fourteenth Amendment. *See Geneva Towers Tenants Organization v. Federated Mortgage Investors, supra*, 504 F.2d at 488. This finding does not mean to preclude a class of applicants for some other governmental benefit from proving their property interests in that benefit. Rather, the court holds only that applicants for General Relief in San Diego County do not have a constitutional right to an evidentiary hearing prior to denial of their applications for aid. *Compare Alexander v. Silverman*, 356 F.Supp. 1179 (E.D.Wis. 1973); *Barnett v. Lindsay*, 319 F.Supp. 610 (D.Utah 1970) (three judge court).

### III. Remedies Available to Denied Applicants

Although applicants denied General Relief are not entitled to an evidentiary hearing as a matter of constitutional law, they are not without recourse. San Diego County's system of administrative review (PG § 90-940.1) furnishes a first vehicle for reconsideration of an applicant's denial. Though informal, the process provides an opportunity for the applicant to support and document his claim and an opportunity for the county to correct errors made early in the eligibility screening process.

A second course open to the denied applicant is simply to re-apply for General Relief. Prior denial does not prevent reapplication.

A third, more ambitious course, is to seek judicial relief. The *Zobriscky* court, 28 Cal.App.3d 930, 933, 105 Cal.Rptr. 121, explicitly emphasized the applicant's freedom to apply for judicial relief in the California courts to ensure that the county has acted fairly and has followed its own standards. *See also Ad-*

*kins v. Leach*, 17 Cal.App.3d 771, 95 Cal.Rptr. 61 (1971). If an applicant can make a *prima facie* showing that his application has been improperly denied, the courts are authorized to remedy the injustice suffered. *Zobriscky v. Los Angeles County, supra*, 28 Cal.App.3d at 933, 105 Cal.Rptr. 121. An appeal for judicial intervention can also challenge a county's more discretionary policy making decisions for General Relief. The courts have not hesitated to step in when a county's administration of General Relief has been found to be in conflict with the statutory goals for the General Relief program. *See, e.g., Mooney v. Pickett*, 4 Cal.3d 669, 94 Cal.Rptr. 279, 483 P.2d 1231 (1971); *Bernhardt v. Board of Supervisors*, 58 Cal.App.3d 806, 130 Cal.Rptr. 189 (1976); *City and County of San Francisco v. Superior Court*, 57 Cal.App.3d 44, 128 Cal.Rptr. 712 (1976). Thus, an aggrieved applicant who is denied General Relief in San Diego County is not foreclosed from using a variety of procedural safeguards for his interests. He is foreclosed only from a constitutional right to a full evidentiary hearing before his application for General Relief may be denied.

THEREFORE, IT IS ORDERED that plaintiff's motion for summary judgment is hereby denied and defendants' motion for summary judgment is hereby granted.

IT IS FURTHER ORDERED that plaintiffs' class action for declaratory and injunctive relief is hereby dismissed.







**APPENDIX B**

NANETTE GRIFFETH, Individually and on behalf of all others  
similarly situated, Plaintiffs-Appellants,

v.

HOMER DETRICH, Director of the Department of Public Welfare  
of San Diego County, et al., Defendants-Appellees.

No. 78-2362

United States Court of Appeals,

Ninth Circuit.

Aug. 29, 1979.

**SUMMARY**

Class action was filed for declaratory and injunctive relief on behalf of all persons whose applications for general relief in San Diego County had been denied or were to be denied in the future. The United States District Court for the Southern District of California, Edward J. Schwarz, Chief Judge, 448 F.Supp. 1137, rendered summary judgment for defendants, and plaintiff appealed. The Court of Appeals, Ferguson, District Judge for the Central District of California, sitting by designation, held that: (1) authorizing statute coupled with implementing regulations created a legitimate claim of entitlement and expectancy of benefits in persons who claimed to meet the eligibility requirements, rising to a level of a property interest subject to due process protections, and (2) in determining whether county procedures satisfied due process the district court was to consider disposition of the appeal as an expression neither of disapproval of the county's procedures nor of approval of the procedures pressed on the court by appellants.

Remanded with directions.

Sneed, Circuit Judge, filed concurring opinion.

Before SNEED and HUG, Circuit Judges, and FERGUSON,\*  
District Judge.

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\*Honorable Warren J. Ferguson, United States District Judge,  
Central District of California, sitting by designation.



FERGUSON, District Judge.

This is an appeal from the district court's grant of summary judgment in favor of defendants. *Griffeth v. Detrich*, 448 F.Supp. 1137 (S.D.Cal. 1978). The district court certified this suit as a class action in behalf of "all persons whose applications for General Relief benefits have been denied by the San Diego County Department of Public Welfare since August 25, 1976, or whose applications will be so denied in the future." Plaintiffs brought suit under 42 U.S.C. § 1983 challenging the constitutionality of the County's procedure for review of benefit applications. The district court held that an applicant does not have "a property interest" or "legitimate claim of entitlement" to the desired aid." *Id.* at 1141. This court holds that they have and the case is remanded for determination of what process is due to protect that property interest.

**Facts**

Sections 17000 and 17001 of the California Welfare & Institutions Code (West) mandate San Diego County's General Relief program:

**§ 17000. Residents**

Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.

**§ 17001. Standards**

The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county.

These statutes and the regulations promulgated by the County define the eligibility conditions for obtaining benefits under the County's General Relief program. While counties have discretion in setting eligibility standards, these standards "must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose." *Mooney v. Pickett*, 4 Cal.3d 669, 679, 94 Cal.Rptr. 279, 285, 483 P.2d 1231, 1237 (1971).

In San Diego, the County Board of Supervisors has delegated responsibility for administration of the County's General Relief program to the Department of Public Welfare and its director. Administrative Code of the County of San Diego, §§ 252 and 256. The Board adopts the basic policies while the Department issues the implementing regulations. These regulations are incorporated into the General Relief Program Guide ("PG") which sets forth the criteria and procedures for establishing eligibility.

Plaintiff Griffeth applied to the Department for general relief on August 18, 1976. She had been fired as a waitress because her employer claimed her dress was improper. Plaintiff Griffeth at the screening interview for general relief benefits disputed the alleged impropriety. Her application, however, was denied because she was "apparently fired for cause." Plaintiff requested and received an administrative review. A supervisor reviewed plaintiff's file and once tried unsuccessfully to reach her former employer. The supervisor denied her application.

Intervenors John and Mildred Tebo applied for general relief on November 3, 1976. Their applications were denied for failure to meet the residential requirement. On November 8, 1976, an administrative review took place and their applications again were denied. The Tebos reapplied for general relief on December 16, 1976, after receiving food stamps and Medi-Cal benefits, and this time their applications were granted. On February 4, 1977, by order of the district court in this action, a second administrative review was held. The Tebos appeared with counsel and written and oral arguments were presented. A hearing officer found that the Department's initial denial of the Tebos' applications was erroneous.

[1, 2] Plaintiffs contend that the San Diego procedures for administrative review of general relief application denials do not satisfy the requirements of procedural due process. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548 (1972). Plaintiffs assert that the interest in general relief benefits is an interest protected by the Fourteenth Amendment. This court agrees.



The Supreme Court has held:

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a *legitimate claim of entitlement to it*. *Id.* at 577, 92 S.Ct. at 2709 (emphasis added).

The Court in *Roth* further explained property interests:

Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. *Id.*

Thus, it is necessary in this case to look to the nature of the interest as defined by state law to determine whether applicants for general relief have a "legitimate claim of entitlement" to such benefits.

The Supreme Court recently found a protectible entitlement in parole applications by inmates in Nebraska state prisons. *Greenholtz v. Nebraska Penal Inmates*, \_\_\_\_\_ U.S. \_\_\_\_\_, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979). The Court accepted the contention that the parole statute itself created a protectible expectation of parole. There the Nebraska statute provided that "[w]henver the Board of Parole considers the release of a committed offender who is eligible for release on parole, it *shall* order his release" unless the Board believes release should be deferred because of any of four specified reasons. *Id.* 99 S.Ct. at 2106 (emphasis added). It was contended that the statute created "a legitimate expectation of release absent the requisite finding that one of the justifications for deferral exists." *Id.* The Court held that "the expectancy of release provided in this statute is entitled to some measure of constitutional protection." *Id.*

Here the authorizing statute also uses mandatory language. Each county must provide general relief. The regulations adopted by San Diego County are detailed. They set forth specific objective eligibility criteria for receipt of aid. For example, recipients must establish their residence or intent to reside in San Diego County. (PG 90-103.2). All recipients must present identification (PG 90-103.1) and must sign a lien. (PG 90-100.3.) A

recipient's income may not exceed certain levels, with a \$2500 real property limit and a \$50 personal property limit. (PG 90-103.31 and 103.32.) All recipients must apply for other potential benefits or demonstrate ineligibility for those benefits. (PG 90-104.2.) The regulations also detail the procedures for determining the applicant's income and property levels and specify certain exclusions.

The regulations are comprehensive and definite. They greatly restrict the discretion of the intake eligibility worker. PG 90-102.22 states "[i]f there is a stated policy, procedure or regulation, a judgmental decision is *neither* required *nor* permitted." (Emphasis in original.)

California state court decisions confirm the mandatory nature of general relief. In *Mooney v. Pickett*, *supra*, the California Supreme Court struck down the general relief regulation of San Mateo County which denied benefits to "employable" single men. That Court held that "[s]ection 17000 imposes a *mandatory duty* upon the counties to support 'all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident.'" 4 Cal.3d at 676, 94 Cal.Rptr. at 283, 483 P.2d at 1235. (Footnote omitted and emphasis added.) *Accord*, *City and County of San Francisco v. Superior Court*, 57 Cal.App.3d 44, 128 Cal.Rptr. 712 (1976). The Court examined the legislative history of the statute and the general relief programs and found that excluding persons from relief because they are unmarried and employable was inconsistent with the law. On remand, the Court of Appeal referred to the mandatory nature of Section 17000 and held that "[c]onsequently, the obligation to provide appellant with General Assistance became a debt due from the county as of the date he was first entitled thereto." 26 Cal.App.3d 431, 435, 102 Cal. Rptr. 708, 177.

The district court, in finding that appellant's interest was not protected, emphasized the "diverse and variable nature" of general relief in California. Each county has considerable discretion in establishing criteria of eligibility. The court wrote: "In reality, the counties define just who it is who qualifies for a 'legitimate claim of entitlement' to General Relief. Until the applicant proves his eligibility under a particular county's guidelines, he has no legitimate claim." 448 F.Supp. at 1140-41.



The district court did not have the benefit of the Supreme Court's opinion in *Greenholtz*. This case, like *Greenholtz*, involves statutory entitlement. Here the authorizing statute coupled with the implementing regulations of the county creates a legitimate claim of entitlement and expectancy of benefits in persons who claim to meet the eligibility requirements.

The district court followed *Zobriscky v. Los Angeles County*, 28 Cal.App.3d 930, 105 Cal.Rptr. 121 (1972), a state court decision which refused to find general relief to be a protected property interest. The district court acknowledged that the state court's ruling on the Fourteenth Amendment issue was not binding but found it instructive "of the state court's view that General Relief is a public benefit similar to other benefits which are not deserving of an evidentiary hearing prior to their denial." 448 F.Supp. at 1141. In finding due process requirements inapplicable, the state court relied on the applicant-recipient distinction. It did not review the mandatory language of the authorizing statutes or the extent to which the regulations establish definite eligibility criteria to greatly narrow the discretion of the County and to create legitimate expectancies of aid receipt. The court apparently did not inquire at all whether the applicants have a legitimate expectation of receiving benefits.

[3] As plaintiffs' expectation of benefits is an interest protected under the Fourteenth Amendment, it is necessary to determine whether the procedures provided by San Diego County meet due process requirements. The district court, having found no property interest, did go on to discuss the remedies available to denied applicants. The court, however, did not analyze them in light of constitutional due process requirements. As the Supreme Court stated in *Greenholtz, supra*, "the quantum and quality of the process due in a particular situation depends upon the need to serve the purpose of minimizing the risk of error. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)." 99 S.Ct. at 2106.

[4] The procedures followed by the San Diego County need to be examined with reference to the criteria established by the Supreme Court. In determining whether San Diego County procedures meet due process requirements, the district court should consider our disposition of this appeal as an expression neither of

disapproval of the County's procedures nor of approval of the procedures pressed upon us by the appellants.

The case is remanded to the district court for a determination of what process is due to protect the plaintiffs' interest in general relief benefits.

SNEED, Circuit Judge (concurring).

I concur in Judge Ferguson's opinion. I should only like to add that in determining the adequacy of procedures required by due process its costs to the public must be weighed against its benefits to both the individual and the public. *Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), explicitly requires the striking of such a balance. See *Parham v. J. L.*, ..... U.S. ...., 99 S.Ct. 2493, 2505-06, 61 L.Ed.2d 101 (1979).

## APPENDIX C



APPENDIX C

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.



Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss of emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

**28 U.S.C. § 2201. Creation of remedy**

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; July 7, 1958, Pub.L. 85-508, § 12(p), 72 Stat. 349.

**42 U.S.C. § 1983. Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

R.S. § 1979.

**California Welfare & Institutions Code § 17000. Residents**

Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.

**California Welfare & Institutions Code § 17001. Standards**

The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county.



—C4—

IN THE  
SUPREME COURT OF THE  
UNITED STATES  
OCTOBER TERM, 1979

NO.

ROBERT PEER, Director of the Department of Public Welfare of  
the County of San Diego; and TOM HAMILTON, LUCILLE MOORE,  
ROGER HEDGECOCK, JIM BATES, and PAUL ECKERT, as individual  
members of the San Diego County Board of Supervisors,  
Petitioners,

v.

NANETTE GRIFFETH, JOHN TEBO, and MILDRED TEBO, and all  
others similarly situated,  
Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 1979, three  
copies of the Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit were mailed, postage pre-  
paid, to each of the following named persons:

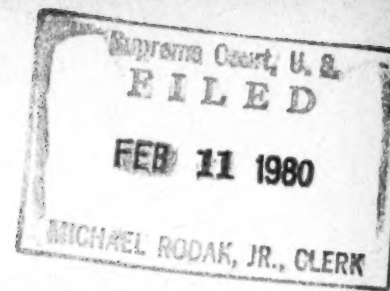
CHARLES WOLFINGER, Esq.  
Legal Aid Society of San Diego, Inc.  
964 Fifth Avenue  
San Diego, California 92101

I further certify that all parties required to be served have been  
served.

DONALD L. CLARK, County Counsel  
County of San Diego

JOSEPH KASE, JR., Assistant County Counsel  
355 County Administration Center  
1600 Pacific Highway  
San Diego, California 92101  
Telephone: (714) 236-3991  
*Attorneys for Petitioners*

No. 79-807



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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

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ROBERT PEER, Director of the Department of Public Welfare of  
the County of San Diego; and TOM HAMILTON, LUCILLE MOORE,  
ROGER HEDGECOCK, JIM BATES, and PAUL ECKERT, as individual  
members of the San Diego County Board of Supervisors,  
*Petitioners,*

v.

NANETTE GRIFFETH, JOHN TEBO, and MILDRED TEBO, AND ALL  
OTHERS SIMILARLY SITUATED,  
*Respondents.*

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## BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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(714) 239-9611  
*Attorneys for Respondents*

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IN THE  
**SUPREME COURT OF THE  
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**OCTOBER TERM, 1979**

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**BRIEF FOR RESPONDENTS IN  
OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI**

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Respondents, applicants for General Relief welfare benefits  
from San Diego County ("County"), request that the petition  
for writ of certiorari by the Director of the County Department  
of Public Welfare and members of the County Board of Super-  
visors, be denied.



## JURISDICTION

The jurisdictional conditions are adequately set forth in the petition.

## QUESTION PRESENTED

Do applicants for General Relief welfare benefits from San Diego County have a property interest in obtaining them that is protected under the Due Process Clause of the Fourteenth Amendment?

## STATEMENT OF THE CASE

The basic history of the case is adequately set forth in the petition.

## ARGUMENT

The only issue decided by the Ninth Circuit was that applicants for General Relief welfare benefits from the County have a property interest in receiving them protected by the Due Process Clause of the Fourteenth Amendment. *Griffeth v. Detrich*, 603 F.2d 118, 120-22 (1979). The only ground raised by the County in support of granting certiorari is an asserted conflict between the Ninth Circuit's decision and the state court decision in *Zobriscky v. Los Angeles County*, 28 Cal.App.3d 930, 105 Cal.Rptr. 121 (1972), *hg. den.* See Supreme Court Rule 19(1)(b). The conflict is the County's creation.

### I

THE NINTH CIRCUIT DECIDED ONLY THE PROTECTED PROPERTY INTEREST ISSUE.

Lurking in the petition (4, 6 n.\*) are indications that the Ninth Circuit's decision addressed the question of what procedures are required by due process on denials of applications for

General Relief welfare benefits. Not even a strained reading of its opinion warrants such a suggestion.

Evaluating procedural due process claims under the Fourteenth Amendment consists of two, analytically distinct steps. First, a court must decide whether due process applies to the challenged action by determining whether it constitutes a governmental deprivation of a protected property or liberty interest. *Greenholtz v. Nebraska Penal Inmates*, ..... U.S. ...., 99 S.Ct. 2100, 2103 (1979); *Board of Regents v. Roth*, 408 U.S. 564, 569-72 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970). Second, if and only if it applies, the court determines what procedures are due.

The Ninth Circuit only decided the first issue in ruling that applicants for General Relief welfare benefits have a protected property interest. (603 F.2d at 121-22.)\* It expressly refrained from indicating any opinion about the resolution of the second question and remanded the case back to the district court for an initial decision on that issue. (*Id.*, 122.) Thus, the only possible conflict with *Zobriscky* must be on its resolution of the protected property interest question.

### II

THE NINTH CIRCUIT'S DECISION IS CORRECT, AND DOES NOT CONFLICT WITH THE STATE COURT'S BECAUSE THEY DECIDE DIFFERENT ISSUES.

A. *The Ninth Circuit Correctly Applied The Proper Standards In Determining That State Law Gives Applicants A Protected Property Interest In General Relief Benefits.*

\*No one disputes that the County welfare department's denial of an application for General Relief benefits is a "deprivation" by "governmental action."



The Ninth Circuit correctly applied this Court's protected property interest test. It noted that under *Roth* it must "... look to the nature of the interest as defined by state law to determine whether applicants for general relief have a 'legitimate claim of entitlement' to such benefits." (603 F.2d at 120.) Under *Greenholtz* they have such a claim if state law requires granting the benefits upon meeting certain conditions. (*Id.*, 121.)

Applying these standards the Ninth Circuit observed that the language of state statutes requires the County (1) to provide General Relief to all poor persons not otherwise eligible for other benefits (California Welfare and Institutions Code § 17000) and (2) to promulgate implementing standards further specifying eligibility requirements (§ 17001). (603 F.2d at 121.) It found that the County's regulations establish clear and definite standards for obtaining General Relief. (*Id.*) Finally, adhering to this Court's decision in *Bishop v. Woods*, 426 U.S. 341, 344 (1976), it examined state court decisions construing the applicable statutory provisions to define more definitely the contours of General Relief benefits under state law. (*Id.*, 121-22.) It found that the California cases uniformly hold that individuals are entitled to General Relief benefits from a county if they meet the statutory conditions and any valid, implementing county standards. (*Id.*)

A brief review of the holdings of those decisions shows that the Ninth Circuit's conclusion was obviously correct. In 1971 the California Supreme Court ruled that a county has a mandatory duty under § 17000 to provide General Relief benefits to all persons who meet the eligibility requirements of the state statutes and of consistent county regulations. *Mooney v. Picket*, 4 Cal.3d 669, 676-78, 94 Cal.Rptr. 279, 283-85 (1971). Each county must promulgate regulations governing benefit levels and other eligibility requirements. *City and Co. of San Francisco v. Superior*

*Court*, 57 Cal.App.3d 41, 51, 128 Cal.Rptr. 712, 717 (1976), *h.g. den.* These regulations "... must be consistent, not in conflict with the statute and reasonably necessary to effectuate its purpose." *Mooney v. Picket*, *supra*, 4 Cal.3d at 681, 94 Cal.Rptr. at 285. Together the statutes and county regulations define the exclusive eligibility conditions for obtaining General Relief benefits from a county. (*Id.*, 680, 94 Cal.Rptr. at 286.)

This statutory obligation becomes a debt owed by a county to an applicant on the day he first meets the eligibility requirements. *Mooney v. Picket*, 26 Cal.App.3d 431, 435, 102 Cal.Rptr. 708, 711 (1972) (on remand). If a county improperly denies his application, an individual is entitled to establish his eligibility and recover retroactive General Relief benefits by a suit in state court. *Mooney v. Picket*, *supra*, 26 Cal.App.3d at 434-36, 102 Cal.Rptr. at 711; *Rogers v. Detrich*, 58 Cal.App.3d at 90, 106, 128 Cal.Rptr. 261, 271 (1976). A county cannot deny benefits on the ground it lacks funds. *Mooney v. Picket*, *supra*, 4 Cal.3d at 680, 94 Cal.Rptr. at 286; *Bernhardt v. Alameda Co. Bd. of Supervisors*, 58 Cal.App.3d 806, 811, 130 Cal.Rptr. 189, 192 (1976); *Rogers v. Detrich*, *supra*, 58 Cal.App.3d at 103, 128 Cal.Rptr. at 269.

The County passes over these decisions without a word, obviously because they demonstrate beyond a doubt that the Ninth Circuit properly decided the protected property interest question in accordance with overwhelming state law.

B. *Zobriscky v. Los Angeles County Did Not Address The Protected Property Interest Issue, But Assumed That General Relief Applicants Had Such An Interest.*

What does *Zobriscky* hold that conflicts with the Ninth Circuit's decision? The County's petition is understandably silent on this score. *Zobriscky* contains not one word about the protected prop-



erty interest question. Instead, it deals solely with the issue of whether applicants denied General Relief are entitled to an administrative evidentiary hearing. (28 Cal.App.3d at 932-33, 105 Cal.Rptr. at 122-23.) To reach that question the state court had to find that applicants have a protected interest.

The whole due process discussion in *Zobriscky* revolved around limiting the reach of *Goldberg's* evidentiary hearing requirement to terminations of a recipient's benefits. The court engaged in an interest balancing test of sorts to determine whether such a hearing was required for applicants. The concluding sentence makes it crystal clear that it was only ruling on the issue of what procedures were due: "... We conclude that any general requirement for an evidentiary hearing in connection with the denial of an application for welfare benefits is neither necessary nor desirable nor required as a matter of due process of law." (28 Cal.App. 3d at 933, 105 Cal.Rptr. at 123.) This discussion dispels any notion that the state court decision conflicts with the issue decided by the Ninth Circuit.

The final paragraph of the *Zobriscky* opinion in fact reveals the state court's complete agreement with the Ninth Circuit's reading of state law on the protected property interest question. The state court expressly recognized that any General Relief applicant, claiming to meet the eligibility requirements under a county's program, could file suit in state court to obtain the benefits (28 Cal.App.3d at 933, 105 Cal.Rptr. at 123), a position consistent with the earlier and later case law on which the Ninth Circuit relied.

### CONCLUSION

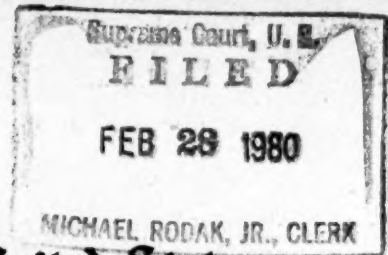
Without any conflict between the Ninth Circuit's decision and *Zobriscky* on the protected property interest question, there is no reason for this Court to exercise its certiorari jurisdiction and the petition should be denied.

Dated: January 28, 1980

Respectfully submitted,

CHARLES WOLFINGER  
LEGAL AID SOCIETY OF SAN DIEGO, INC.  
*Attorneys for Respondents*





IN THE

**Supreme Court of the United States**

OCTOBER TERM 1979

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No. 79-807

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ROBERT PEER, Director of the Department of Public Welfare of the County of San Diego; and TOM HAMILTON, LUCILLE MOORE, ROGER HEDGECOCK, JIM BATES, and PAUL ECKERT, as individual members of the San Diego County Board of Supervisors,

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---

**REPLY BRIEF OF PETITIONERS**

---

DONALD L. CLARK, County Counsel  
JOSEPH KASE, JR., Assistant  
LLOYD M. HARMON, JR., Chief Deputy  
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*Attorneys for Petitioners*



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*Respondents.*

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## REPLY BRIEF OF PETITIONERS

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### I

#### THE DECISION OF THE COURT OF APPEALS DOES CONFLICT WITH ZOBRISCKY v. LOS ANGELES COUNTY.

Respondents contention that the decision of the Ninth Circuit (*Nanette Griffeth v. Homer Detrich*, [9th Cir. 1979] 603 F.2d 118) does not conflict with *Zobriscky v. Los Angeles County* (1972) 28 Cal.App.3d 930 is contradicted by the very language of the Ninth Circuit.



The court states:

"The district court followed *Zobriscky v. Los Angeles County* (1972) 28 Cal.App.3d 930, 105 Cal.Rptr. 121 (1972), a state court decision *which refused to find general relief to be a protected property interest.*" (*Nanette Griffeth v. Homer Detrich supra* 603 F.2d 118, 121). (Emphasis added.)

Thus, both the District Court below and the Court of Appeals view *Zobriscky* as holding that an applicant for general relief has no property interest in such benefits.

## II

### THE RIGHTS OF APPLICANTS DENIED PUBLIC BENEFITS SHOULD BE DECIDED BY THIS COURT.

Respondent states that the only ground raised by petitioners for granting certiorari is the conflict between the Ninth Circuit decision and the decision of the State Court of Appeal in *Zobriscky*, (Respondent's Brief p. 2). While this conflict is certainly material to the issue of granting certiorari, it is not the only reason for doing so nor is it the petitioners' sole ground for petitioning.

As stated in the petition, the Supreme Court has never ruled on the issue of whether procedural due process applies to applicants denied public benefits. Due to the importance of this issue and the contradictory case law, the petition should be granted.

Dated:

Respectfully submitted,  
DONALD L. CLARK, County Counsel  
By

JOSEPH KASE, JR., Assistant

LLOYD M. HARMON, JR., Chief Deputy

WILLIAM D. SMITH, Deputy  
*Attorneys for Petitioners*

IN THE  
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*Respondents.*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 1980 three copies of the  
Reply Brief of Petitioners were mailed, postage prepaid, to each  
of the following named persons:

CHARLES WOLFINGER, Esq.  
Legal Aid Society of San Diego, Inc.  
964 Fifth Avenue  
San Diego, California 92101

I further certify that all parties required to be served have  
been served.

DONALD L. CLARK, County Counsel  
County of San Diego

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